



2009-051

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
ATTORNEY GENERAL

March 10, 2009

500 DEXTER AVENUE  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.STATE.AL.US

Honorable R. Rainer Cotter, III  
City Attorney, City of Enterprise  
Marsh, Cotter & Stewart, LLP  
Post Office Box 310910  
Enterprise, Alabama 36331-0910

Municipalities - Employees, Employers,  
Employment - Veteran's Preference -  
Veterans - Coffee County

The Enterprise City Council has the authority, without specific enabling legislation, to pass an ordinance or resolution that gives hiring and promotion preferences to honorably discharged veterans of the United States Armed Forces.

Dear Mr. Cotter:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Enterprise.

QUESTION

Without enabling legislation passed by the Alabama Legislature or some other applicable, authorizing law, may the City Council of the City of Enterprise pass an ordinance/resolution that gives hiring and promotion preferences to honorably discharged veterans of the United States Armed Forces?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that a local veterans group has inquired as to whether the City of Enterprise ("City") could give hiring and/or promotion preferences to veterans who seek employment or are currently employed with the City. In your request, you note

that, although the State of Alabama has approved a veterans preference in the state employee classifications system, there is no mandate or law that compels a municipality to give hiring and/or promotion preferences to veterans.

As reflected in your question and in your letter of request, you are particularly concerned regarding the authority of the City to create a system that provides hiring and promotion preferences without the implementation of enabling legislation by the Alabama Legislature. Your request noted that the Alabama Legislature has passed civil service acts related to municipalities that grant specific municipalities or personnel boards the power to enact general hiring practices and policies. The City of Enterprise, however, has neither a personnel board, nor does the City have a point system in place as to hiring or for promotions related to most other jobs. Thus, you question whether municipalities, whose authority is limited by legislative mandate, may independently establish a hiring and promotion preference for veterans through ordinance or resolution or if such action requires the enactment of specific enabling legislation by the Alabama Legislature.

Section 11-43-81 of the Code of Alabama gives the mayor the authority to hire officers whose appointment is not otherwise provided for by law. Specifically, this section states as follows:

***The mayor shall be the chief executive officer, and shall have general supervision and control of all other officers*** and the affairs of the city or town, except as otherwise provided in this title. ***He shall have the power to appoint all officers whose appointment is not otherwise provided for by law.*** He may remove any officer for good cause, except those elected by the people, and fill the vacancy caused thereby, permanently, if the appointment of such officer is made by the mayor, and temporarily, if such officer was elected by the council or appointed with its consent, in either of which last two cases he must report such removal and his reasons therefor to the council at its next regular meeting, when, if the council shall sustain the act of removal by the mayor by a majority vote of those elected to the council, the vacancy shall be filled as provided in this title.

Section 11-45-1 of the Code of Alabama provides for the adoption of ordinances by a municipality. ALA. CODE § 11-45-1 (2008). The Supreme Court of Alabama has determined that this law, along with relevant case law, permits the enactment of laws by ordinance or resolution in the absence of a statutory requirement for a specific mode of enactment. Opinion to Honorable Jay M. Ross, Attorney, City of Bayou La Batre, dated April 21, 1997, A.G. No. 97-00166, quoting *Tutwiler Drug Co. v. City of Birmingham*, 436 So. 2d 29 (Ala. 1982). Section 11-43-81 provides the mayor of a municipality with the authority to appoint all personnel whose appointment is not otherwise provided by law. Accordingly, section 11-43-81 has been interpreted as authorizing the adoption of personnel rules, which then have the force and effect of law and take the hiring authority out of the hands of the mayor. Opinion to Honorable Robert L. Austin, President, Hoover City Council, dated June 22, 2004, A.G. No. 2004-163; and to Honorable Jerry W. Jackson, Attorney, Haleyville City Council, dated January 5, 1999, A.G. No. 99-00072.

As a result of a subsequent conversation, you forwarded to this Office a current copy of the City of Enterprise Employee Handbook. This handbook, among other things, has the policies and procedures regarding hiring, classification, and promotion for city employees. This particular document states, in pertinent part, as follows:

#### SECTION 1. General

Selection and promotions to all classified positions shall be solely the basis of merit, which shall be determined by evaluation of the applicant's (1) training, education, experience and physical fitness, (2) oral interview and (3) whenever practical, an examination or demonstration performance test.

#### SECTION 2. Tests

The Personnel Officer may establish tests or examinations that are warranted to determine whether or not an applicant or employee meets established standards. Public Safety Personnel are required to have a written examination that will be administered before they interview with the Public Safety. Minimum scores will be required.

#### SECTION 4. Promotion

All vacancies occurring in the classified service shall be advertised internally and such applicants will be given full consideration. However, if deemed appropriate, the Personnel Officer may recruit applicants from outside the public service whenever there is a reason to believe that better qualified applicants are available than within the public service. The criteria used in the selection of the most qualified applicant shall be based upon experience, performance evaluations, and where appropriate, examination.

*City of Enterprise Employee Handbook, Personnel Policies and Procedures, Affirmative Action, at 5-6.*

Although there is no authority directly on point regarding your specific inquiry, this Office previously issued an opinion to the Honorable John B. Nisbet, Jr., Mayor, City of Jacksonville, dated July 13, 1988, A.G. No. 88-00359, as to whether the City of Jacksonville Civil Service Board had the authority to implement veterans preference points for the purpose of determining positions on eligibility lists for civil service jobs. After reviewing the act that created the Jacksonville Civil Service Board and the rules promulgated thereafter by the Jacksonville Civil Service Board, this Office determined that the Board was authorized to establish a policy granting veterans preference points on civil service examinations. The specific language used in those authorities and cited in the *Nisbet* opinion stated as follows:

Section 5 of the Act creates a Civil Service Board of the City of Jacksonville and Section 9 of the Act specifies that this board "shall have power to make rules and regulations governing ... eligible registers ... and such other matters as may be necessary to accomplish, the purpose of this Act."

...

Finally, under Rule VII, Section 1, the competitive examinations for civil service positions "may take into consideration such factors as education, experience, character, physical fitness, appearance or any other qualifications which the Civil Service Board determines as

entering into the testing of the relative fitness of applicants."

*Nisbet* at 2 (emphasis in original).

The language used in the Civil Service Act for the City of Jacksonville is very similar to the language used in the City of Enterprise Employee Handbook. The City of Jacksonville and the City of Enterprise are factually distinguishable because the City of Jacksonville, through an act of the Alabama Legislature, had a civil service board created that is given the authority to establish personnel rules and policies. It is unlawful for a city governing body, without specific legislative authority, to establish an independent board to which the municipality delegates authority that is otherwise the responsibility of the municipality. Opinion to the Honorable Guy F. Gunter, III, dated April 7, 1992, A.G. No. 92-00234.

Although the City of Enterprise does not have a civil service board, as stated above, it has the authority under other statutory provisions to adopt and implement, by resolution or ordinance, personnel policies and procedures. The City of Enterprise has adopted an employee handbook that establishes personnel policies and procedures, including hiring and promotion policies. Consistent with that authority, the City of Enterprise may adopt an ordinance or resolution that gives hiring and/or promotion preferences to honorably discharged veterans.

Typically, municipalities that have a mechanism for implementing a veterans preference program also have a civil service or personnel board in place. Generally, most veterans preference programs work on a point system. It may be difficult to implement or administer such a program without a point system. While it is the opinion of this Office that the City of Enterprise is authorized to implement a veterans preference program, this Office takes no official position as to whether the City should implement such a program.

#### CONCLUSION

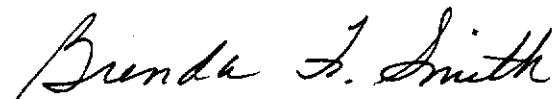
The Enterprise City Council has the authority, without specific enabling legislation, to pass an ordinance or resolution that gives hiring and promotion preferences to honorably discharged veterans of the United States Armed Forces.

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I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING  
Attorney General  
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

TK/MMG  
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